

S. B. No. 26  
As Re-Referred by the House  
Rules and Reference Committee

**Topic:** Exempt incontinence products from sales tax 1

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, delete "section" and insert "sections 2  
5739.02 and" 3

In line 4 of the title, after "supplies" insert "and to exempt some 4  
incontinence products from sales and use tax" 5

In line 5, delete "section" and insert "sections 5739.02 and" 6

After line 6, insert: 7

"Sec. 5739.02. For the purpose of providing revenue with 8  
which to meet the needs of the state, for the use of the general 9  
revenue fund of the state, for the purpose of securing a 10  
thorough and efficient system of common schools throughout the 11  
state, for the purpose of affording revenues, in addition to 12  
those from general property taxes, permitted under 13  
constitutional limitations, and from other sources, for the 14  
support of local governmental functions, and for the purpose of 15



reimbursing the state for the expense of administering this 16  
chapter, an excise tax is hereby levied on each retail sale made 17  
in this state. 18

(A) (1) The tax shall be collected as provided in section 19  
5739.025 of the Revised Code. The rate of the tax shall be five 20  
and three-fourths per cent. The tax applies and is collectible 21  
when the sale is made, regardless of the time when the price is 22  
paid or delivered. 23

(2) In the case of the lease or rental, with a fixed term 24  
of more than thirty days or an indefinite term with a minimum 25  
period of more than thirty days, of any motor vehicles designed 26  
by the manufacturer to carry a load of not more than one ton, 27  
watercraft, outboard motor, or aircraft, or of any tangible 28  
personal property, other than motor vehicles designed by the 29  
manufacturer to carry a load of more than one ton, to be used by 30  
the lessee or renter primarily for business purposes, the tax 31  
shall be collected by the vendor at the time the lease or rental 32  
is consummated and shall be calculated by the vendor on the 33  
basis of the total amount to be paid by the lessee or renter 34  
under the lease agreement. If the total amount of the 35  
consideration for the lease or rental includes amounts that are 36  
not calculated at the time the lease or rental is executed, the 37  
tax shall be calculated and collected by the vendor at the time 38  
such amounts are billed to the lessee or renter. In the case of 39  
an open-end lease or rental, the tax shall be calculated by the 40  
vendor on the basis of the total amount to be paid during the 41  
initial fixed term of the lease or rental, and for each 42  
subsequent renewal period as it comes due. As used in this 43  
division, "motor vehicle" has the same meaning as in section 44  
4501.01 of the Revised Code, and "watercraft" includes an 45  
outdrive unit attached to the watercraft. 46

A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(3) Except as provided in division (A) (2) of this section, in the case of a sale, the price of which consists in whole or in part of the lease or rental of tangible personal property, the tax shall be measured by the installments of that lease or rental.

(4) In the case of a sale of a physical fitness facility service or recreation and sports club service, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers and sales or transfers of	76
magazines distributed as controlled circulation publications;	77
(5) The furnishing, preparing, or serving of meals without	78
charge by an employer to an employee provided the employer	79
records the meals as part compensation for services performed or	80
work done;	81
(6) (a) Sales of motor fuel upon receipt, use,	82
distribution, or sale of which in this state a tax is imposed by	83
the law of this state, but this exemption shall not apply to the	84
sale of motor fuel on which a refund of the tax is allowable	85
under division (A) of section 5735.14 of the Revised Code; and	86
the tax commissioner may deduct the amount of tax levied by this	87
section applicable to the price of motor fuel when granting a	88
refund of motor fuel tax pursuant to division (A) of section	89
5735.14 of the Revised Code and shall cause the amount deducted	90
to be paid into the general revenue fund of this state;	91
(b) Sales of motor fuel other than that described in	92
division (B) (6) (a) of this section and used for powering a	93
refrigeration unit on a vehicle other than one used primarily to	94
provide comfort to the operator or occupants of the vehicle.	95
(7) Sales of natural gas by a natural gas company or	96
municipal gas utility, of water by a water-works company, or of	97
steam by a heating company, if in each case the thing sold is	98
delivered to consumers through pipes or conduits, and all sales	99
of communications services by a telegraph company, all terms as	100
defined in section 5727.01 of the Revised Code, and sales of	101
electricity delivered through wires;	102
(8) Casual sales by a person, or auctioneer employed	103
directly by the person to conduct such sales, except as to such	104

sales of motor vehicles, watercraft or outboard motors required 105  
to be titled under section 1548.06 of the Revised Code, 106  
watercraft documented with the United States coast guard, 107  
snowmobiles, and all-purpose vehicles as defined in section 108  
4519.01 of the Revised Code; 109

(9) (a) Sales of services or tangible personal property, 110  
other than motor vehicles, mobile homes, and manufactured homes, 111  
by churches, organizations exempt from taxation under section 112  
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 113  
organizations operated exclusively for charitable purposes as 114  
defined in division (B) (12) of this section, provided that the 115  
number of days on which such tangible personal property or 116  
services, other than items never subject to the tax, are sold 117  
does not exceed six in any calendar year, except as otherwise 118  
provided in division (B) (9) (b) of this section. If the number of 119  
days on which such sales are made exceeds six in any calendar 120  
year, the church or organization shall be considered to be 121  
engaged in business and all subsequent sales by it shall be 122  
subject to the tax. In counting the number of days, all sales by 123  
groups within a church or within an organization shall be 124  
considered to be sales of that church or organization. 125

(b) The limitation on the number of days on which tax- 126  
exempt sales may be made by a church or organization under 127  
division (B) (9) (a) of this section does not apply to sales made 128  
by student clubs and other groups of students of a primary or 129  
secondary school, or a parent-teacher association, booster 130  
group, or similar organization that raises money to support or 131  
fund curricular or extracurricular activities of a primary or 132  
secondary school. 133

(c) Divisions (B) (9) (a) and (b) of this section do not 134

apply to sales by a noncommercial educational radio or 135  
television broadcasting station. 136

(10) Sales not within the taxing power of this state under 137  
the Constitution or laws of the United States or the 138  
Constitution of this state; 139

(11) Except for transactions that are sales under division 140  
(B) (3) (r) of section 5739.01 of the Revised Code, the 141  
transportation of persons or property, unless the transportation 142  
is by a private investigation and security service; 143

(12) Sales of tangible personal property or services to 144  
churches, to organizations exempt from taxation under section 145  
501(c) (3) of the Internal Revenue Code of 1986, and to any other 146  
nonprofit organizations operated exclusively for charitable 147  
purposes in this state, no part of the net income of which 148  
inures to the benefit of any private shareholder or individual, 149  
and no substantial part of the activities of which consists of 150  
carrying on propaganda or otherwise attempting to influence 151  
legislation; sales to offices administering one or more homes 152  
for the aged or one or more hospital facilities exempt under 153  
section 140.08 of the Revised Code; and sales to organizations 154  
described in division (D) of section 5709.12 of the Revised 155  
Code. 156

"Charitable purposes" means the relief of poverty; the 157  
improvement of health through the alleviation of illness, 158  
disease, or injury; the operation of an organization exclusively 159  
for the provision of professional, laundry, printing, and 160  
purchasing services to hospitals or charitable institutions; the 161  
operation of a home for the aged, as defined in section 5701.13 162  
of the Revised Code; the operation of a radio or television 163  
broadcasting station that is licensed by the federal 164

communications commission as a noncommercial educational radio 165  
or television station; the operation of a nonprofit animal 166  
adoption service or a county humane society; the promotion of 167  
education by an institution of learning that maintains a faculty 168  
of qualified instructors, teaches regular continuous courses of 169  
study, and confers a recognized diploma upon completion of a 170  
specific curriculum; the operation of a parent-teacher 171  
association, booster group, or similar organization primarily 172  
engaged in the promotion and support of the curricular or 173  
extracurricular activities of a primary or secondary school; the 174  
operation of a community or area center in which presentations 175  
in music, dramatics, the arts, and related fields are made in 176  
order to foster public interest and education therein; the 177  
production of performances in music, dramatics, and the arts; or 178  
the promotion of education by an organization engaged in 179  
carrying on research in, or the dissemination of, scientific and 180  
technological knowledge and information primarily for the 181  
public. 182

Nothing in this division shall be deemed to exempt sales 183  
to any organization for use in the operation or carrying on of a 184  
trade or business, or sales to a home for the aged for use in 185  
the operation of independent living facilities as defined in 186  
division (A) of section 5709.12 of the Revised Code. 187

(13) Building and construction materials and services sold 188  
to construction contractors for incorporation into a structure 189  
or improvement to real property under a construction contract 190  
with this state or a political subdivision of this state, or 191  
with the United States government or any of its agencies; 192  
building and construction materials and services sold to 193  
construction contractors for incorporation into a structure or 194  
improvement to real property that are accepted for ownership by 195

this state or any of its political subdivisions, or by the 196  
 United States government or any of its agencies at the time of 197  
 completion of the structures or improvements; building and 198  
 construction materials sold to construction contractors for 199  
 incorporation into a horticulture structure or livestock 200  
 structure for a person engaged in the business of horticulture 201  
 or producing livestock; building materials and services sold to 202  
 a construction contractor for incorporation into a house of 203  
 public worship or religious education, or a building used 204  
 exclusively for charitable purposes under a construction 205  
 contract with an organization whose purpose is as described in 206  
 division (B)(12) of this section; building materials and 207  
 services sold to a construction contractor for incorporation 208  
 into a building under a construction contract with an 209  
 organization exempt from taxation under section 501(c)(3) of the 210  
 Internal Revenue Code of 1986 when the building is to be used 211  
 exclusively for the organization's exempt purposes; building and 212  
 construction materials sold for incorporation into the original 213  
 construction of a sports facility under section 307.696 of the 214  
 Revised Code; building and construction materials and services 215  
 sold to a construction contractor for incorporation into real 216  
 property outside this state if such materials and services, when 217  
 sold to a construction contractor in the state in which the real 218  
 property is located for incorporation into real property in that 219  
 state, would be exempt from a tax on sales levied by that state; 220  
 building and construction materials for incorporation into a 221  
 transportation facility pursuant to a public-private agreement 222  
 entered into under sections 5501.70 to 5501.83 of the Revised 223  
 Code; and, until one calendar year after the construction of a 224  
 convention center that qualifies for property tax exemption 225  
 under section 5709.084 of the Revised Code is completed, 226



building and construction materials and services sold to a	227
construction contractor for incorporation into the real property	228
comprising that convention center;	229
(14) Sales of ships or vessels or rail rolling stock used	230
or to be used principally in interstate or foreign commerce, and	231
repairs, alterations, fuel, and lubricants for such ships or	232
vessels or rail rolling stock;	233
(15) Sales to persons primarily engaged in any of the	234
activities mentioned in division (B) (42) (a), (g), or (h) of this	235
section, to persons engaged in making retail sales, or to	236
persons who purchase for sale from a manufacturer tangible	237
personal property that was produced by the manufacturer in	238
accordance with specific designs provided by the purchaser, of	239
packages, including material, labels, and parts for packages,	240
and of machinery, equipment, and material for use primarily in	241
packaging tangible personal property produced for sale,	242
including any machinery, equipment, and supplies used to make	243
labels or packages, to prepare packages or products for	244
labeling, or to label packages or products, by or on the order	245
of the person doing the packaging, or sold at retail. "Packages"	246
includes bags, baskets, cartons, crates, boxes, cans, bottles,	247
bindings, wrappings, and other similar devices and containers,	248
but does not include motor vehicles or bulk tanks, trailers, or	249
similar devices attached to motor vehicles. "Packaging" means	250
placing in a package. Division (B) (15) of this section does not	251
apply to persons engaged in highway transportation for hire.	252
(16) Sales of food to persons using supplemental nutrition	253
assistance program benefits to purchase the food. As used in	254
this division, "food" has the same meaning as in 7 U.S.C. 2012	255
and federal regulations adopted pursuant to the Food and	256

Nutrition Act of 2008.	257
(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption primarily in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption primarily in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;	258 259 260 261 262 263 264 265 266 267 268 269 270 271
(18) Sales of drugs for a human being that may be dispensed only pursuant to a prescription; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with medical disease; hospital beds when purchased by hospitals, nursing homes, or other medical facilities; and medical oxygen and medical oxygen-dispensing equipment when purchased by hospitals, nursing homes, or other medical facilities;	272 273 274 275 276 277 278 279 280 281 282
(19) Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.	283 284 285 286

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and emergency medical services, for political subdivisions of the state;	287 288 289 290 291
(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;	292 293 294 295 296 297 298
(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;	299 300 301 302 303
(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;	304 305 306
(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for	307 308 309 310 311 312 313 314 315 316

sale, when the plant or plants within or between which such	317
transfers or shipments occur are operated by the same person.	318
"Packages" includes containers, cases, baskets, flats, fillers,	319
filler flats, cartons, closure materials, labels, and labeling	320
materials, and "packaging" means placing therein.	321
(25) (a) Sales of water to a consumer for residential use;	322
(b) Sales of water by a nonprofit corporation engaged	323
exclusively in the treatment, distribution, and sale of water to	324
consumers, if such water is delivered to consumers through pipes	325
or tubing.	326
(26) Fees charged for inspection or reinspection of motor	327
vehicles under section 3704.14 of the Revised Code;	328
(27) Sales to persons licensed to conduct a food service	329
operation pursuant to section 3717.43 of the Revised Code, of	330
tangible personal property primarily used directly for the	331
following:	332
(a) To prepare food for human consumption for sale;	333
(b) To preserve food that has been or will be prepared for	334
human consumption for sale by the food service operator, not	335
including tangible personal property used to display food for	336
selection by the consumer;	337
(c) To clean tangible personal property used to prepare or	338
serve food for human consumption for sale.	339
(28) Sales of animals by nonprofit animal adoption	340
services or county humane societies;	341
(29) Sales of services to a corporation described in	342
division (A) of section 5709.72 of the Revised Code, and sales	343
of tangible personal property that qualifies for exemption from	344

taxation under section 5709.72 of the Revised Code;	345
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	346 347 348
(31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the Revised Code;	349 350 351
(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;	352 353 354 355 356 357
(33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;	358 359 360 361 362
(34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B) (42) (a) or	363 364 365 366 367 368 369 370 371 372 373

(n) of this section to which the vendor may otherwise be 374  
entitled, based upon the use of the thing purchased in providing 375  
the telecommunications, mobile telecommunications, or satellite 376  
broadcasting service. 377

(35) (a) Sales where the purpose of the consumer is to use 378  
or consume the things transferred in making retail sales and 379  
consisting of newspaper inserts, catalogues, coupons, flyers, 380  
gift certificates, or other advertising material that prices and 381  
describes tangible personal property offered for retail sale. 382

(b) Sales to direct marketing vendors of preliminary 383  
materials such as photographs, artwork, and typesetting that 384  
will be used in printing advertising material; and of printed 385  
matter that offers free merchandise or chances to win sweepstake 386  
prizes and that is mailed to potential customers with 387  
advertising material described in division (B) (35) (a) of this 388  
section; 389

(c) Sales of equipment such as telephones, computers, 390  
facsimile machines, and similar tangible personal property 391  
primarily used to accept orders for direct marketing retail 392  
sales. 393

(d) Sales of automatic food vending machines that preserve 394  
food with a shelf life of forty-five days or less by 395  
refrigeration and dispense it to the consumer. 396

For purposes of division (B) (35) of this section, "direct 397  
marketing" means the method of selling where consumers order 398  
tangible personal property by United States mail, delivery 399  
service, or telecommunication and the vendor delivers or ships 400  
the tangible personal property sold to the consumer from a 401  
warehouse, catalogue distribution center, or similar fulfillment 402

facility by means of the United States mail, delivery service, 403  
or common carrier. 404

(36) Sales to a person engaged in the business of 405  
horticulture or producing livestock of materials to be 406  
incorporated into a horticulture structure or livestock 407  
structure; 408

(37) Sales of personal computers, computer monitors, 409  
computer keyboards, modems, and other peripheral computer 410  
equipment to an individual who is licensed or certified to teach 411  
in an elementary or a secondary school in this state for use by 412  
that individual in preparation for teaching elementary or 413  
secondary school students; 414

(38) Sales of tangible personal property that is not 415  
required to be registered or licensed under the laws of this 416  
state to a citizen of a foreign nation that is not a citizen of 417  
the United States, provided the property is delivered to a 418  
person in this state that is not a related member of the 419  
purchaser, is physically present in this state for the sole 420  
purpose of temporary storage and package consolidation, and is 421  
subsequently delivered to the purchaser at a delivery address in 422  
a foreign nation. As used in division (B)(38) of this section, 423  
"related member" has the same meaning as in section 5733.042 of 424  
the Revised Code, and "temporary storage" means the storage of 425  
tangible personal property for a period of not more than sixty 426  
days. 427

(39) Sales of used manufactured homes and used mobile 428  
homes, as defined in section 5739.0210 of the Revised Code, made 429  
on or after January 1, 2000; 430

(40) Sales of tangible personal property and services to a 431

provider of electricity used or consumed directly and primarily 432  
in generating, transmitting, or distributing electricity for use 433  
by others, including property that is or is to be incorporated 434  
into and will become a part of the consumer's production, 435  
transmission, or distribution system and that retains its 436  
classification as tangible personal property after 437  
incorporation; fuel or power used in the production, 438  
transmission, or distribution of electricity; energy conversion 439  
equipment as defined in section 5727.01 of the Revised Code; and 440  
tangible personal property and services used in the repair and 441  
maintenance of the production, transmission, or distribution 442  
system, including only those motor vehicles as are specially 443  
designed and equipped for such use. The exemption provided in 444  
this division shall be in lieu of all other exemptions in 445  
division (B) (42) (a) or (n) of this section to which a provider 446  
of electricity may otherwise be entitled based on the use of the 447  
tangible personal property or service purchased in generating, 448  
transmitting, or distributing electricity. 449

(41) Sales to a person providing services under division 450  
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 451  
personal property and services used directly and primarily in 452  
providing taxable services under that section. 453

(42) Sales where the purpose of the purchaser is to do any 454  
of the following: 455

(a) To incorporate the thing transferred as a material or 456  
a part into tangible personal property to be produced for sale 457  
by manufacturing, assembling, processing, or refining; or to use 458  
or consume the thing transferred directly in producing tangible 459  
personal property for sale by mining, including, without 460  
limitation, the extraction from the earth of all substances that 461



are classed geologically as minerals, or directly in the 462  
rendition of a public utility service, except that the sales tax 463  
levied by this section shall be collected upon all meals, 464  
drinks, and food for human consumption sold when transporting 465  
persons. This paragraph does not exempt from "retail sale" or 466  
"sales at retail" the sale of tangible personal property that is 467  
to be incorporated into a structure or improvement to real 468  
property. 469

(b) To hold the thing transferred as security for the 470  
performance of an obligation of the vendor; 471

(c) To resell, hold, use, or consume the thing transferred 472  
as evidence of a contract of insurance; 473

(d) To use or consume the thing directly in commercial 474  
fishing; 475

(e) To incorporate the thing transferred as a material or 476  
a part into, or to use or consume the thing transferred directly 477  
in the production of, magazines distributed as controlled 478  
circulation publications; 479

(f) To use or consume the thing transferred in the 480  
production and preparation in suitable condition for market and 481  
sale of printed, imprinted, overprinted, lithographic, 482  
multilithic, blueprinted, photostatic, or other productions or 483  
reproductions of written or graphic matter; 484

(g) To use the thing transferred, as described in section 485  
5739.011 of the Revised Code, primarily in a manufacturing 486  
operation to produce tangible personal property for sale; 487

(h) To use the benefit of a warranty, maintenance or 488  
service contract, or similar agreement, as described in division 489

(B) (7) of section 5739.01 of the Revised Code, to repair or 490  
maintain tangible personal property, if all of the property that 491  
is the subject of the warranty, contract, or agreement would not 492  
be subject to the tax imposed by this section; 493

(i) To use the thing transferred as qualified research and 494  
development equipment; 495

(j) To use or consume the thing transferred primarily in 496  
storing, transporting, mailing, or otherwise handling purchased 497  
sales inventory in a warehouse, distribution center, or similar 498  
facility when the inventory is primarily distributed outside 499  
this state to retail stores of the person who owns or controls 500  
the warehouse, distribution center, or similar facility, to 501  
retail stores of an affiliated group of which that person is a 502  
member, or by means of direct marketing. This division does not 503  
apply to motor vehicles registered for operation on the public 504  
highways. As used in this division, "affiliated group" has the 505  
same meaning as in division (B) (3) (e) of section 5739.01 of the 506  
Revised Code and "direct marketing" has the same meaning as in 507  
division (B) (35) of this section. 508

(k) To use or consume the thing transferred to fulfill a 509  
contractual obligation incurred by a warrantor pursuant to a 510  
warranty provided as a part of the price of the tangible 511  
personal property sold or by a vendor of a warranty, maintenance 512  
or service contract, or similar agreement the provision of which 513  
is defined as a sale under division (B) (7) of section 5739.01 of 514  
the Revised Code; 515

(l) To use or consume the thing transferred in the 516  
production of a newspaper for distribution to the public; 517

(m) To use tangible personal property to perform a service 518

listed in division (B) (3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;

(n) To use or consume the thing transferred primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(o) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing;

(p) To provide the thing transferred to the owner or lessee of a motor vehicle that is being repaired or serviced, if the thing transferred is a rented motor vehicle and the purchaser is reimbursed for the cost of the rented motor vehicle by a manufacturer, warrantor, or provider of a maintenance, service, or other similar contract or agreement, with respect to the motor vehicle that is being repaired or serviced;

(q) To use or consume the thing transferred directly in production of crude oil and natural gas for sale. Persons engaged in rendering production services for others are deemed engaged in production.

As used in division (B) (42) (q) of this section, "production" means operations and tangible personal property

directly used to expose and evaluate an underground reservoir 548  
that may contain hydrocarbon resources, prepare the wellbore for 549  
production, and lift and control all substances yielded by the 550  
reservoir to the surface of the earth. 551

(i) For the purposes of division (B)(42)(q) of this 552  
section, the "thing transferred" includes, but is not limited 553  
to, any of the following: 554

(I) Services provided in the construction of permanent 555  
access roads, services provided in the construction of the well 556  
site, and services provided in the construction of temporary 557  
impoundments; 558

(II) Equipment and rigging used for the specific purpose 559  
of creating with integrity a wellbore pathway to underground 560  
reservoirs; 561

(III) Drilling and workover services used to work within a 562  
subsurface wellbore, and tangible personal property directly 563  
used in providing such services; 564

(IV) Casing, tubulars, and float and centralizing 565  
equipment; 566

(V) Trailers to which production equipment is attached; 567

(VI) Well completion services, including cementing of 568  
casing, and tangible personal property directly used in 569  
providing such services; 570

(VII) Wireline evaluation, mud logging, and perforation 571  
services, and tangible personal property directly used in 572  
providing such services; 573

(VIII) Reservoir stimulation, hydraulic fracturing, and 574  
acidizing services, and tangible personal property directly used 575

in providing such services, including all material pumped	576
downhole;	577
(IX) Pressure pumping equipment;	578
(X) Artificial lift systems equipment;	579
(XI) Wellhead equipment and well site equipment used to	580
separate, stabilize, and control hydrocarbon phases and produced	581
water;	582
(XII) Tangible personal property directly used to control	583
production equipment.	584
(ii) For the purposes of division (B) (42) (q) of this	585
section, the "thing transferred" does not include any of the	586
following:	587
(I) Tangible personal property used primarily in the	588
exploration and production of any mineral resource regulated	589
under Chapter 1509. of the Revised Code other than oil or gas;	590
(II) Tangible personal property used primarily in storing,	591
holding, or delivering solutions or chemicals used in well	592
stimulation as defined in section 1509.01 of the Revised Code;	593
(III) Tangible personal property used primarily in	594
preparing, installing, or reclaiming foundations for drilling or	595
pumping equipment or well stimulation material tanks;	596
(IV) Tangible personal property used primarily in	597
transporting, delivering, or removing equipment to or from the	598
well site or storing such equipment before its use at the well	599
site;	600
(V) Tangible personal property used primarily in gathering	601
operations occurring off the well site, including gathering	602

pipelines transporting hydrocarbon gas or liquids away from a	603
crude oil or natural gas production facility;	604
(VI) Tangible personal property that is to be incorporated	605
into a structure or improvement to real property;	606
(VII) Well site fencing, lighting, or security systems;	607
(VIII) Communication devices or services;	608
(IX) Office supplies;	609
(X) Trailers used as offices or lodging;	610
(XI) Motor vehicles of any kind;	611
(XII) Tangible personal property used primarily for the	612
storage of drilling byproducts and fuel not used for production;	613
(XIII) Tangible personal property used primarily as a	614
safety device;	615
(XIV) Data collection or monitoring devices;	616
(XV) Access ladders, stairs, or platforms attached to	617
storage tanks.	618
The enumeration of tangible personal property in division	619
(B) (42) (q) (ii) of this section is not intended to be exhaustive,	620
and any tangible personal property not so enumerated shall not	621
necessarily be construed to be a "thing transferred" for the	622
purposes of division (B) (42) (q) of this section.	623
The commissioner shall adopt and promulgate rules under	624
sections 119.01 to 119.13 of the Revised Code that the	625
commissioner deems necessary to administer division (B) (42) (q)	626
of this section.	627
As used in division (B) (42) of this section, "thing"	628

includes all transactions included in divisions (B) (3) (a), (b), 629  
and (e) of section 5739.01 of the Revised Code. 630

(43) Sales conducted through a coin operated device that 631  
activates vacuum equipment or equipment that dispenses water, 632  
whether or not in combination with soap or other cleaning agents 633  
or wax, to the consumer for the consumer's use on the premises 634  
in washing, cleaning, or waxing a motor vehicle, provided no 635  
other personal property or personal service is provided as part 636  
of the transaction. 637

(44) Sales of replacement and modification parts for 638  
engines, airframes, instruments, and interiors in, and paint 639  
for, aircraft used primarily in a fractional aircraft ownership 640  
program, and sales of services for the repair, modification, and 641  
maintenance of such aircraft, and machinery, equipment, and 642  
supplies primarily used to provide those services. 643

(45) Sales of telecommunications service that is used 644  
directly and primarily to perform the functions of a call 645  
center. As used in this division, "call center" means any 646  
physical location where telephone calls are placed or received 647  
in high volume for the purpose of making sales, marketing, 648  
customer service, technical support, or other specialized 649  
business activity, and that employs at least fifty individuals 650  
that engage in call center activities on a full-time basis, or 651  
sufficient individuals to fill fifty full-time equivalent 652  
positions. 653

(46) Sales by a telecommunications service vendor of 900 654  
service to a subscriber. This division does not apply to 655  
information services, as defined in division (FF) of section 656  
5739.01 of the Revised Code. 657

(47) Sales of value-added non-voice data service. This 658  
division does not apply to any similar service that is not 659  
otherwise a telecommunications service. 660

(48) (a) Sales of machinery, equipment, and software to a 661  
qualified direct selling entity for use in a warehouse or 662  
distribution center primarily for storing, transporting, or 663  
otherwise handling inventory that is held for sale to 664  
independent salespersons who operate as direct sellers and that 665  
is held primarily for distribution outside this state; 666

(b) As used in division (B) (48) (a) of this section: 667

(i) "Direct seller" means a person selling consumer 668  
products to individuals for personal or household use and not 669  
from a fixed retail location, including selling such product at 670  
in-home product demonstrations, parties, and other one-on-one 671  
selling. 672

(ii) "Qualified direct selling entity" means an entity 673  
selling to direct sellers at the time the entity enters into a 674  
tax credit agreement with the tax credit authority pursuant to 675  
section 122.17 of the Revised Code, provided that the agreement 676  
was entered into on or after January 1, 2007. Neither 677  
contingencies relevant to the granting of, nor later 678  
developments with respect to, the tax credit shall impair the 679  
status of the qualified direct selling entity under division (B) 680  
(48) of this section after execution of the tax credit agreement 681  
by the tax credit authority. 682

(c) Division (B) (48) of this section is limited to 683  
machinery, equipment, and software first stored, used, or 684  
consumed in this state within the period commencing June 24, 685  
2008, and ending on the date that is five years after that date. 686



(49) Sales of materials, parts, equipment, or engines used 687  
in the repair or maintenance of aircraft or avionics systems of 688  
such aircraft, and sales of repair, remodeling, replacement, or 689  
maintenance services in this state performed on aircraft or on 690  
an aircraft's avionics, engine, or component materials or parts. 691  
As used in division (B) (49) of this section, "aircraft" means 692  
aircraft of more than six thousand pounds maximum certified 693  
takeoff weight or used exclusively in general aviation. 694

(50) Sales of full flight simulators that are used for 695  
pilot or flight-crew training, sales of repair or replacement 696  
parts or components, and sales of repair or maintenance services 697  
for such full flight simulators. "Full flight simulator" means a 698  
replica of a specific type, or make, model, and series of 699  
aircraft cockpit. It includes the assemblage of equipment and 700  
computer programs necessary to represent aircraft operations in 701  
ground and flight conditions, a visual system providing an out- 702  
of-the-cockpit view, and a system that provides cues at least 703  
equivalent to those of a three-degree-of-freedom motion system, 704  
and has the full range of capabilities of the systems installed 705  
in the device as described in appendices A and B of part 60 of 706  
chapter 1 of title 14 of the Code of Federal Regulations. 707

(51) Any transfer or lease of tangible personal property 708  
between the state and JobsOhio in accordance with section 709  
4313.02 of the Revised Code. 710

(52) (a) Sales to a qualifying corporation. 711

(b) As used in division (B) (52) of this section: 712

(i) "Qualifying corporation" means a nonprofit corporation 713  
organized in this state that leases from an eligible county 714  
land, buildings, structures, fixtures, and improvements to the 715

land that are part of or used in a public recreational facility 716  
used by a major league professional athletic team or a class A 717  
to class AAA minor league affiliate of a major league 718  
professional athletic team for a significant portion of the 719  
team's home schedule, provided the following apply: 720

(I) The facility is leased from the eligible county 721  
pursuant to a lease that requires substantially all of the 722  
revenue from the operation of the business or activity conducted 723  
by the nonprofit corporation at the facility in excess of 724  
operating costs, capital expenditures, and reserves to be paid 725  
to the eligible county at least once per calendar year. 726

(II) Upon dissolution and liquidation of the nonprofit 727  
corporation, all of its net assets are distributable to the 728  
board of commissioners of the eligible county from which the 729  
corporation leases the facility. 730

(ii) "Eligible county" has the same meaning as in section 731  
307.695 of the Revised Code. 732

(53) Sales to or by a cable service provider, video 733  
service provider, or radio or television broadcast station 734  
regulated by the federal government of cable service or 735  
programming, video service or programming, audio service or 736  
programming, or electronically transferred digital audiovisual 737  
or audio work. As used in division (B) (53) of this section, 738  
"cable service" and "cable service provider" have the same 739  
meanings as in section 1332.01 of the Revised Code, and "video 740  
service," "video service provider," and "video programming" have 741  
the same meanings as in section 1332.21 of the Revised Code. 742

(54) Sales of a digital audio work electronically 743  
transferred for delivery through use of a machine, such as a 744

juke box, that does all of the following:	745
(a) Accepts direct payments to operate;	746
(b) Automatically plays a selected digital audio work for	747
a single play upon receipt of a payment described in division	748
(B) (54) (a) of this section;	749
(c) Operates exclusively for the purpose of playing	750
digital audio works in a commercial establishment.	751
(55) (a) Sales of the following occurring on the first	752
Friday of August and the following Saturday and Sunday of each	753
year, beginning in 2018:	754
(i) An item of clothing, the price of which is seventy-	755
five dollars or less;	756
(ii) An item of school supplies, the price of which is	757
twenty dollars or less;	758
(iii) An item of school instructional material, the price	759
of which is twenty dollars or less.	760
(b) As used in division (B) (55) of this section:	761
(i) "Clothing" means all human wearing apparel suitable	762
for general use. "Clothing" includes, but is not limited to,	763
aprons, household and shop; athletic supporters; baby receiving	764
blankets; bathing suits and caps; beach capes and coats; belts	765
and suspenders; boots; coats and jackets; costumes; diapers,	766
children and adult, including disposable diapers; earmuffs;	767
footlets; formal wear; garters and garter belts; girdles; gloves	768
and mittens for general use; hats and caps; hosiery; insoles for	769
shoes; lab coats; neckties; overshoes; pantyhose; rainwear;	770
rubber pants; sandals; scarves; shoes and shoe laces; slippers;	771
sneakers; socks and stockings; steel-toed shoes; underwear;	772

uniforms, athletic and nonathletic; and wedding apparel. 773

"Clothing" does not include items purchased for use in a trade 774  
or business; clothing accessories or equipment; protective 775  
equipment; sports or recreational equipment; belt buckles sold 776  
separately; costume masks sold separately; patches and emblems 777  
sold separately; sewing equipment and supplies including, but 778  
not limited to, knitting needles, patterns, pins, scissors, 779  
sewing machines, sewing needles, tape measures, and thimbles; 780  
and sewing materials that become part of "clothing" including, 781  
but not limited to, buttons, fabric, lace, thread, yarn, and 782  
zippers. 783

(ii) "School supplies" means items commonly used by a 784  
student in a course of study. "School supplies" includes only 785  
the following items: binders; book bags; calculators; cellophane 786  
tape; blackboard chalk; compasses; composition books; crayons; 787  
erasers; folders, expandable, pocket, plastic, and manila; glue, 788  
paste, and paste sticks; highlighters; index cards; index card 789  
boxes; legal pads; lunch boxes; markers; notebooks; paper, 790  
loose-leaf ruled notebook paper, copy paper, graph paper, 791  
tracing paper, manila paper, colored paper, poster board, and 792  
construction paper; pencil boxes and other school supply boxes; 793  
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 794  
and writing tablets. "School supplies" does not include any item 795  
purchased for use in a trade or business. 796

(iii) "School instructional material" means written 797  
material commonly used by a student in a course of study as a 798  
reference and to learn the subject being taught. "School 799  
instructional material" includes only the following items: 800  
reference books, reference maps and globes, textbooks, and 801  
workbooks. "School instructional material" does not include any 802  
material purchased for use in a trade or business. 803

(56) (a) Sales of diapers or incontinence underpads sold 804  
pursuant to a prescription for the benefit of a medicaid 805  
recipient with a diagnosis of incontinence, provided that the 806  
medicaid program covers diapers or incontinence underpads as an 807  
incontinence garment. 808

(b) As used in division (B) (56) (a) of this section: 809

(i) "Diaper" means an absorbent garment worn by humans who 810  
are incapable of, or have difficulty, controlling their bladder 811  
or bowel movements. 812

(ii) "Incontinence underpad" means an absorbent product, 813  
not worn on the body, designed to protect furniture or other 814  
tangible personal property from soiling or damage due to human 815  
incontinence. 816

(C) For the purpose of the proper administration of this 817  
chapter, and to prevent the evasion of the tax, it is presumed 818  
that all sales made in this state are subject to the tax until 819  
the contrary is established. 820

(D) The levy of this tax on retail sales of recreation and 821  
sports club service shall not prevent a municipal corporation 822  
from levying any tax on recreation and sports club dues or on 823  
any income generated by recreation and sports club dues. 824

(E) The tax collected by the vendor from the consumer 825  
under this chapter is not part of the price, but is a tax 826  
collection for the benefit of the state, and of counties levying 827  
an additional sales tax pursuant to section 5739.021 or 5739.026 828  
of the Revised Code and of transit authorities levying an 829  
additional sales tax pursuant to section 5739.023 of the Revised 830  
Code. Except for the discount authorized under section 5739.12 831  
of the Revised Code and the effects of any rounding pursuant to 832

section 5703.055 of the Revised Code, no person other than the 833  
state or such a county or transit authority shall derive any 834  
benefit from the collection or payment of the tax levied by this 835  
section or section 5739.021, 5739.023, or 5739.026 of the 836  
Revised Code." 837

In line 1084, delete "section" and insert "sections 5739.02 and" 838

In line 1085, delete "is" and insert "are" 839

In line 1086, after "3." insert "The amendment by this act of 840  
section 5739.02 of the Revised Code applies on and after the first day of 841  
the first month that begins at least thirty days after the effective date 842  
of this section." 843

The motion was \_\_\_\_\_ agreed to.